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Committee of Experts on International Cooperation in Tax Matters

Report on the twelfth and thirteenth sessions (11-14 October 2016 and 5-8 December 2016)

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Note

Symbols of United Nations documents are composed of letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

[1 March 2017]

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Chapter I
Introduction

1. Pursuant to Economic and Social Council resolution 2004/69 and decision 2017/205, the twelfth session of the Committee of Experts on International Cooperation in Tax Matters was held in Geneva from 11 to 14 October 2016 and the thirteenth session of the Committee was held in New York from 5 to 8 December 2016.

2. The twelfth session of the Committee was attended by 23 Committee members and 102 observers. The thirteenth session was attended by 19 Committee members and 65 observers. Other observers at both sessions represented international organizations, civil society and business or participated in a personal capacity.

3. The provisional agenda and documentation for the twelfth session, as adopted by the Committee (E/C.18/2016/1), was as follows:

1. Opening of the session by the Chair of the Committee.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:
   - (a) Issues related to the updating of the United Nations Model Tax Convention:
     - (i) Article 1 (Persons covered): application of treaty rules to hybrid entities;
     - (ii) Article 8 (Shipping, inland waterways transport and air transport): the meaning and coverage of the term "profits from the operation of ships or aircraft in international traffic";
     - (iii) Article 12 (Royalties): possible amendments to the commentary on article 12 in relation to:[1]
       - a. Industrial, commercial or scientific equipment;
       - b. Software-related payments;
     - (iv) Article 23 A (Exemption method): minority view on inclusion of paragraph 4;
     - (v) Article 26 (Exchange of information): proposed code of conduct;
     - (vi) Taxation of services:
       - a. Commentary on the article on technical services;
       - b. Proposed Article 12 alternative;
     - (vii) Base erosion and profit shifting;

[1] Consideration of the item was deferred to the fourteenth session.

(b) Other issues:

(i) Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;

(ii) Taxation of the extractive industries;

(iii) Taxation of development projects;

(iv) Capacity-building;

(v) Mutual agreement procedure — dispute avoidance and resolution;

(vi) International trade in goods — tax issues;

(vii) Tax incentives — presentation by delegate from the International Monetary Fund.

4. Dates and provisional agenda for the thirteenth session of the Committee.

5. Adoption of the report of the Committee on its twelfth session.

4. The provisional agenda and documentation for the thirteenth session, as adopted by the Committee (E/C.18/2016/6), was as follows:

1. Opening of the session by the Chair of the Committee.

2. Adoption of the agenda and organization of work.

3. Discussion of substantive issues related to international cooperation in tax matters:

(a) Issues related to the updating of the United Nations Model Double Taxation Convention between Developed and Developing Countries:

(i) Article 8 (Shipping, inland waterways transport and air transport): the meaning and coverage of the term "profits from the operation of ships or aircraft in international traffic";

(ii) Presentation by the representative of the Organization for Economic Cooperation and Development (OECD) on changes to the OECD Model Tax Convention on Income and on Capital relating to international traffic and possible similar changes to the United Nations Model Double Taxation Convention;[1]

(iii) Base erosion and profit shifting — possible changes to articles and commentaries, including a possible limitation on benefits clause;

(iv) Numbering of the updated articles of the updated United Nations Model Double Taxation Convention;

(b) Other issues:

(i) Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries — report on the editorial process;

(ii) Taxation of the extractive industries;

(iii) Taxation of development projects;

(iv) Mutual agreement procedure — dispute avoidance and resolution;[1]

(v) Capacity-building;

(vi) Presentation on environmental tax issues of relevance to developing countries.

4. Dates and provisional agenda for the fourteenth session of the Committee.

5. Adoption of the report of the Committee on its twelfth and thirteenth sessions.

Chapter II
Matters calling for action by the Economic and Social Council or brought to its attention

A. Draft resolution recommended for adoption by the Economic and Social Council

5. The Committee of Experts on International Cooperation in Tax Matters, following the discussions outlined in chapter IV, part D, of the present report, recommends that the Economic and Social Council review and adopt the following draft resolution:

Draft resolution
United Nations code of conduct on cooperation in combating international tax evasion

The Economic and Social Council,

Recognizing that tax evasion, including tax fraud, is a global problem affecting developed and developing countries,

Considering that during the past years, the Committee of Experts on International Cooperation in Tax Matters has devoted substantial time and effort towards updating the provisions related to exchange of information in the United Nations Model Double Taxation Convention between Developed and Developing Countries, in order to adjust to current conditions,

Considering also that, at its fifth session, the Committee of Experts adopted the code of conduct on cooperation in combating international tax evasion,[1] setting minimum standards of conduct required of Member States regarding the exchange of information,

Welcoming the important role that the Group of 20 has played in the international sphere by supporting and encouraging the development of new initiatives on automatic exchange of information and to tackle tax evasion,

Acknowledging the important role that the multilateral Convention on Mutual Administrative Assistance in Tax Matters can play in facilitating the implementation of automatic exchange of information, and taking advantage of the fact that a number of countries have already signed the Convention, including a growing number of developing countries and several jurisdictions that are covered by way of territorial extension,

Noting that to tackle tax evasion, including tax fraud, automatic exchange of information has been developed to exchange information about financial accounts held by certain tax residents of a foreign jurisdiction with that jurisdiction's tax authorities,

[1] See *Official Records of the Economic and Social Council, 2009, Supplement No. 25* (E/2009/45-E/C.18/2009/6), annex.

Considering that a number of countries and jurisdictions are committed to an early adoption of automatic exchange of information,

Acknowledging that all information exchanged is subject to the confidentiality rules and other safeguards provided for in the legal instrument pursuant to which it is exchanged, including the purposes for which the information may be used and limiting to whom the information may be disclosed,

Recognizing, however, that automatic exchange of information presents challenges to developed and developing countries that should be adequately addressed by developing the appropriate legal framework, having the necessary information technology and human resources in place, as well as capacity-building, in order to achieve effective and efficient implementation,

Conscious of the need to provide technical assistance and capacity-building to developing countries so that they may reap the benefits of automatic exchange of information,

Emphasizing that nothing in the present resolution affects the rights and obligations of States or their respective spheres of competence,

1. *Decides* to adopt the following code of conduct, and invites States to consider adopting the goals and substantive actions set out therein.

United Nations code of conduct on cooperation in combating international tax evasion

I. Goals

The code of conduct has the following goals:

(a) To ensure that all States following this code of conduct, in an effort to combat international tax evasion and avoidance, and to protect their tax bases from non-compliance with their tax laws, provide that high levels of transparency and exchange of information in tax matters are adhered to, in particular, automatic exchange of information;

(b) To assist in the development of international norms, practical steps and capacity-building programmes that those States may follow, with a view to preventing and combating international tax evasion and protecting their tax bases from non compliance with their tax laws.

II. Substantive actions

States following this code of conduct intend to:

(a) Effectively exchange information in both criminal and civil tax matters;

(b) Have appropriate confidentiality rules for information exchanged and safeguards and limitations that apply to taxpayer information;

(c) Endorse the work carried out on automatic exchange of financial account information, including the Standard for Automatic Exchange of Financial Account Information in Tax Matters, the so-called Common Reporting Standard;

(d) Encourage all countries that have not already done so to consider becoming a party to the multilateral Convention on Mutual Administrative Assistance in Tax Matters;

(e) Affirm the need to work within the United Nations, as well as with the Organization for Economic Cooperation and Development, the Global Forum on Transparency and Exchange of Information for Tax Purposes, the Group of 20 and other concerned multilateral bodies and relevant international organizations in order to help developing countries and countries with economies in transition to identify their needs for capacity-building and technical assistance on automatic exchange of information, including on addressing confidentiality issues;

(f) Also affirm the need to conduct technical meetings, seminars and other capacity-building or technical assistance events on automatic exchange of information, including confidentiality, for developing countries and countries with economies in transition, with the involvement of concerned multilateral bodies and relevant international organizations.

The substantive actions are intended to be taken by means of two broad types:

1. Unilateral means: the national implementation of automatic exchange of information may necessitate that countries amend their domestic legislation and practices and develop necessary administrative resources and information technology infrastructure;

2. Bilateral or, as appropriate, multilateral means, including regional approaches: the principles of transparency and effective exchange of information will generally be implemented through international cooperation (capacity-building), bilateral or multilateral arrangements in order to exchange information automatically, including by implementing the substance of article 26 and the accompanying commentary of the United Nations Model Double Taxation Convention between Developed and Developing Countries, as finalized by the Committee of Experts on International Cooperation in Tax Matters.

Chapter III
Organization of the sessions

A. Opening of the twelfth session and adoption of the agenda

6. The twelfth session of the Committee was opened on 11 October 2016 by the Chair of the Committee, Armando Lara Yaffar. He then invited the Director of the Financing for Development Office of the Department of Economic and Social Affairs, Alexander Trepelkov, to speak on behalf of the Secretary-General.

7. The Director of the Financing for Development Office briefed Committee members and observers on the major developments in the area of sustainable development and its financing, as related to the work of the Committee. He noted that at the third International Conference on Financing for Development, held in 2015, Member States had decided to further enhance the resources of the Committee, including its subcommittees, in order to strengthen its effectiveness and operational capacity. In particular, the frequency of Committee meetings was increased to two per year, with a duration of four working days each (see General Assembly resolution 69/313). He noted that, after a period of uncertainty, the Economic and Social Council had now confirmed that, beginning in 2017, the first session would be held in the second quarter of each year, in New York, and the second session in the fourth quarter, in Geneva. As a special measure, the first session to be held in New York under the new arrangements would be held from 5 to 8 December 2016, with a one-day special meeting of the Council on international cooperation in tax matters being held on 9 December. The session held in New York every year would be held back-to-back with a one-day special meeting of the Council, which would increase the engagement of the Committee with the Council.

8. The Director also outlined developments relating to the platform for collaboration on tax, a joint initiative of the International Monetary Fund (IMF), the Organization for Economic Cooperation and Development (OECD), the United Nations and the World Bank Group aiming to facilitate more systematic information-sharing on relevant activities, produce joint outputs and toolkits and improve the interactions and synergies between standard-setting and capacity development. He noted, in particular, the platform's report, requested by the Group of 20, entitled "Enhancing the effectiveness of external support in building tax capacity in developing countries".

9. The agenda was adopted, with the exception of consideration of item 3 (a) (iii): Article 12 (Royalties), which was deferred until the fourteenth session, to allow the relevant Subcommittee an opportunity to meet.

B. Opening of the thirteenth session and adoption of the agenda

10. The thirteenth session of the Committee was opened on 5 December 2016 by the Chair, Mr. Lara Yaffar. As was the case at the twelfth session, he then invited the Director of the Financing for Development Office to speak on behalf of the Secretary-General.

11. The Director updated members on developments relating to the work of the platform for collaboration on tax, including a meeting held on 17 and 18 October on "Strengthening external support for building tax capacity in developing countries" and an event held on 21 October, on the margins of the General Assembly. He also gave an overview of the work of IMF, OECD, the United Nations and the World Bank on toolkits to assist developing countries in dealing with such matters as accessing relevant comparables for transfer pricing purposes.

12. The agenda was approved, but the Committee recognized that it might not be possible to fully consider all items and that some may need to be further considered at the fourteenth session. In the event, there was insufficient time to consider item 3(a)(ii) Presentation by the representative of the Organization for Economic Cooperation and Development (OECD) on changes to the OECD Model Tax Convention on Income and on Capital relating to international traffic and possible similar changes to the United Nations Model Double Taxation Convention, in any detail. Consideration of that item was therefore deferred until the fourteenth session.

13. Consideration of item 3(b)(iv) Mutual agreement procedure — dispute avoidance and resolution, was similarly deferred until the fourteenth session.

14. The summary in chapter IV of the present report reflects the discussions of all agenda items considered at the twelfth and thirteenth sessions, not necessarily in the order of discussion, but reflecting the continuation of many discussions between those two sessions.

Chapter IV
Discussion and conclusions on substantive issues related to international cooperation in tax matters

A. Article 1 (Persons covered): application of treaty rules to hybrid entities

15. At the Committee's ninth, tenth and eleventh sessions, Henry John Louie had reported on the application of tax treaties to payments through so-called "hybrid entities" (entities characterized differently by treaty partners as to their transparency or opacity for tax purposes).

16. At the twelfth session, Mr. Louie presented a revised paper on the topic,[1] as requested by the Committee, as a basis for discussion and for a possible new rule to be included in article 1 of the United Nations Model Convention.

17. Mr. Louie explained the purpose of the last sentence of the proposed article 1 (2). Such a saving clause was intended to ensure that a country maintains the right to tax its residents regardless of the existence of a convention. He suggested that once the work of the Subcommittee on base erosion and profit shifting was discussed, and if the Committee approved a broader saving clause, then the inclusion of such wording in paragraph 2 may no longer be necessary.

18. In cases involving a third country, the following wording was added after the quotation of paragraph 26.16 of the Model Tax Convention on Income and on Capital:

> As the first step in applying the benefits of the Convention, paragraph 2 identifies the resident of a contracting State that derives an item of income for which treaty benefits are sought. In order to be entitled to such benefits, such resident must also satisfy any additional requirements that are set forth in the applicable treaty, such as beneficially owning the item of income under the tax principles of the source State, any applicable requisite ownership thresholds (such as those found in subparagraph 2 (a) of article 10 (Dividends)) and either a principle purpose test or a limitation on benefits provision.

19. Also at the twelfth session, Mr. Louie proposed a new paragraph 6 in the commentary to article 1, clarifying the need to meet other requirements before a taxpayer could receive treaty benefits, and a new paragraph noting the possibility for competent authority arrangements of general applicability to provide greater clarity.

20. The issue arose of possible duplicative claims. Text drafted by Mr. Louie to address the issue was approved by the Committee. The Committee approved the proposal as amended and thanked Mr. Louie for his work.

B. Article 8 (Shipping, inland waterways transport and air transport)

21. At the twelfth and thirteenth sessions, the Coordinator of the Subcommittee on article 8, Cezary Krysiak, reported on its work, which was to examine article 8 and

[1] Documentation for the twelfth session is available on the Committee website www.un.org/esa/ffd/events/event/twelfth-session-tax.html.

its commentary and to propose any necessary changes. In line with its mandate, the Subcommittee's work mainly focused on two issues: (a) the coverage of the concept of "auxiliary activities"; and (b) the issue of the application of article 8 to cruise shipping, as follows.

The coverage of the concept of auxiliary activities

22. At the twelfth session, it was agreed that the potential application of article 8 to cruise shipping would be acknowledged in the commentary by including an example appertaining to cruise shipping. It had been agreed at the eleventh session to refer to "ancillary" rather than "auxiliary" activities, and at the twelfth session there was agreement on some consequential amendments to the commentary. It was agreed that minority views on the coverage of "ancillary activities" would be addressed in the commentary by additional wording to be discussed at the thirteenth session.

23. At the thirteenth session, the coordinator of the Subcommittee on International Transport took the members through the relevant paper.[2] Proposed changes had been circulated to cover the issue of profits attributable to transportation activities. During discussions, views were expressed by some Members that profits from certain activities, including inland transportation, the leasing of containers and trade in emission permits or credits, were not properly within the scope of article 8 as ancillary activities. Other views were expressed that ancillary activities more generally were not covered by article 8, because they are not mentioned in the text of that article. To address these minority views, the following new paragraph 11.1 was agreed to be included in the commentary:

> Some members do not fully agree with the interpretation of "profits from the operation of ships or aircraft in international traffic" in paragraphs 10.1 and 11 of this commentary. Some of those members consider that activities of an ancillary nature are not covered by the text of article 8 as such activities are not mentioned in the text of that article of the United Nations Model Convention. Others consider that only some of the examples given in the OECD commentary quoted above will not fall within the definition of "profits from the operation of ships or aircraft in international traffic".

24. It would also be noted, probably in a footnote, that the commentary referred to in the quoted text (paragraph 14.1 of the OECD commentary) was the OECD rather than the United Nations commentary.

25. Another view expressed in discussions was that while the article, in its terms, did cover such inland transportation, some countries may prefer, as a policy preference, that the terms of the article be amended in their bilateral treaties to provide that article 8 did not cover such activities.

26. There was considerable discussion about what would constitute a "stop" in another country for the purposes of differentiating voyages regarded as being within a country from international voyages. The concept of "meaningful" stops or stops at "destinations" were discussed as options to ensure that it was not enough, for article 8 to apply, that there was simply a "stop" of any sort. It was agreed that, in principle,

[2] Documentation for the thirteenth session is available on the Committee website www.un.org/esa/ffd/events/event-thirteenth-session-tax.html.

for a stop to render a voyage "international" there must be some sense of a passenger stop or destination — for example, a fuel stop or an unscheduled stop to alight an ill passenger would not be sufficient. The Subcommittee was thanked for its work.

Some procedural issues of general applicability

27. The broader issue arose as to whether Committee Members should include minority views corresponding to the views expressed by their countries in relation to the OECD Model Convention (observations, reservations or positions). The secretariat was requested to prepare a short paper on the options for dealing with minority views, for the Committee's consideration at its fourteenth session, under an agenda item addressing "Other matters for consideration, including suggestions for Committee procedures and future Committee work". It was decided not to "date stamp" minority views as having been expressed at a particular session, at this stage.

28. On another related issue, it was decided that, for the purposes of the membership of the Committee at the time of the session, members not physically present would not be allowed to vote, though they could present their views for consideration. The secretariat was asked to address the issue in the paper on procedural issues and to record therein the discussions on the issue to date. The matter was not expected to be discussed further at the fourteenth session, but such a paper might be useful for the next membership of the Committee should it wish to reconsider the issues at the fifteenth session or on any subsequent occasion.

Changes to the Model Tax Convention on Income and on Capital

29. The issue of whether other changes to the Model Tax Convention on Income and on Capital and commentary may be relevant to the United Nations Model Convention was outlined in a paper prepared by OECD for the thirteenth session and presented in part by a representative of OECD, Jacques Sasseville, but time did not allow for anything other than an initial discussion of some aspects of that paper, the consideration of which will be resumed at the fourteenth session.

C. Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries

30. At the twelfth session of the Committee, the Coordinator of the Subcommittee on Article 9 (Associated enterprises): Transfer Pricing, Stig Sollund, took members through the history and drafting developments on the update of the United Nations Practical Manual on Transfer Pricing for Developing Countries. Also at the twelfth session, the Committee approved the contents of the manual, subject to necessary editing.

31. The Coordinator noted the particular inclusion on the guidance on the "sixth method" for addressing some commodities transactions, which had been adopted by an increasing number of developing countries. He noted that inclusion of this guidance, and the form of it, had not been without controversy, but it had been included as an important contribution by the United Nations to the discussion on transfer pricing as it affects developing countries.

32. The Coordinator noted that many countries had not committed to adopting action 13 of the Group of 20/OECD Action Plan on Base Erosion and Profit Shifting (Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting), but that the outcomes of the Action Plan had had a very important influence on the update, including on definitions, and that the manual was supportive of the outcomes relating to action 13. Any issues raised by the observers as to perceived inconsistencies would nevertheless be examined during editing to see if there were any unintended differences in language or the possibility of misperceptions of differing approaches.

33. At the thirteenth session, an update was given on the editing process and members and other participants were provided with current drafts of the component parts of the manual. The Subcommittee was thanked for its work and the Coordinator was asked to continue the Subcommittee's editorial work with a view to, if possible, launching the manual at the one-day special meeting of the Economic and Social Council on international cooperation in tax matters, on 7 April 2017.

D. Article 26 (Exchange of information): proposed code of conduct

34. The discussions on exchange of information were introduced by the Coordinator of the Subcommittee on Exchange of Information, Mr. Lara. He introduced a paper on a revised proposed United Nations code of conduct on cooperation in combating international tax evasion. He explained that at its fifth session, the Committee had adopted a proposed code and submitted it for consideration by the Economic and Social Council (see E/2009/45-E/C.18/2009/6, annex). At the time, the Council took note of the proposed code but took no further action. The Subcommittee considered that there was an opportunity to update the code to take on board recent developments and to make a united statement in support of automatic exchange of information. A proposal had been put forward for discussion at the tenth session, in 2014, and at the eleventh session, in 2015, and the current version took into account points raised at that time and since then.

35. The Coordinator recalled the work done in this area by the Group of 20/OECD Action Plan on Base Erosion and Profit Shifting, in which a growing number of countries had committed to the automatic exchange of information with the aim of curbing tax avoidance and tax evasion. He asked the Committee to discuss the proper procedure for the Economic and Social Council, and by extension the United Nations, to make a clear statement in support of automatic exchange of information among countries. After discussion of the procedure and only if such a text is deemed necessary, the Committee would discuss its content.

36. Further suggestions were made to clarify that the text was not intended to be a legally binding instrument. The form of the code was agreed as set out in chapter II of the present report, with the recognition that its ultimate form would depend on requirements of the Economic and Social Council.

E. Taxation of technical services

37. At its ninth session, in 2013, the Committee confirmed its decision to introduce a new article dealing with the taxation of technical services. The drafting of the article itself was agreed upon at the eleventh session. At the twelfth session, the Coordinator of the Subcommittee on Taxation of Services, Liselott Kana, introduced a paper prepared with the help of a consultant, Brian Arnold, entitled: "Revised draft article and commentary for the United Nations Model Tax Convention — Fees for technical services". She said that the paper was an update, though in most parts identical to the draft commentary presented a year before.

38. In accordance with previous Committee decisions, the paper provided the previously agreed text of the article (in annex 1 to the paper) and then addressed three key aspects of the commentaries for consideration: (a) the draft commentary for the new article (in annex 2); (b) a draft of proposed new wording for the commentary on article 12 to address fees for technical services for countries preferring to deal with such services in the context of that article, rather than as a separate article (in annex 3); and (c) wording for relevant commentaries addressing consequential amendments to current articles 23 A (2) and 24 (4) (in annex 4).

39. On the proposed commentary for the article, the Coordinator drew the participants' attention to what was agreed at the eleventh session, which was to include an option for a "lighter", less expansive article on fees for technical services, for countries preferring that option. That option was in paragraph 26 of annex 2 to the paper. Ms. Kana also noted that a few changes may be needed in the wording of the new article and its commentary.

40. The issue of "high-value services" and "low-value services" generated considerable discussion and raised the difficulty of defining technical services, particularly when it comes to the exclusion of services provided by students, trainees or apprentices. In the end it was agreed that draft paragraph 48 of annex 2 to the paper would be deleted. Other minor drafting changes were also made.

41. The issue of the numbering of the new article was discussed but left for consideration at the thirteenth session, as part of the broader issue of possible renumbering of the United Nations Model Convention. At that session it was decided that it would be numbered as article 12 A.

42. The issue of applicability and implementation of the new article was raised. It was observed that, in practice, there may be problems regarding how country tax administrations apply the new provisions in the article. The Coordinator recommended that issues of applicability and implementation should be part of the work going forward, possibly leading to drafting of a manual on the issue.

43. After all the changes had been added to the draft presented to the Committee on 14 October 2016, it was agreed that the text of the new article and its commentary was final, including a rewording of paragraph 74 on reimbursements, with an example to be added to make it clearer. The Subcommittee and Mr. Arnold were thanked for their work in bringing the complex issue to a successful conclusion.

F. Environmental taxation issues of relevance to developing countries

44. The International Tax Director at the Swedish Ministry of Finance, Ingela Willfors, initiated the discussion on the item by pointing out that the Group of 20/OECD Action Plan on Base Erosion and Profit Shifting had signalled that the least developed countries are the ones most affected by environmental changes, and yet they are the ones who make least use of environmental taxes because of a lack of capacity, resources and knowledge in the application of indirect tax systems. Sweden had been applying carbon taxes for over 25 years and had set a possible example for other countries. Carbon tax had been the policy of choice for Sweden over other forms of environmental taxation, such as taxes similar to value added tax, energy consumption taxes, energy excise taxes and emissions trading mechanisms, owing to its administrative simplicity and low cost.

45. A representative of the Swedish Ministry of Energy, Susanne Åkerfeldt, then outlined the Swedish experience in greater detail. She gave a presentation on the significance of environmental taxation for the economic development of developing countries and analysed how a country might design its tax system in order to raise revenues while making use of indirect taxes and other environmentally sound policies.

46. Ms. Åkerfeldt noted that one of the benefits of a carbon tax is that the cost of applying the tax is low. A carbon tax may be merely added to the existing fuel taxes without any additional administrative cost. Since the carbon tax is expressed as a trade unit (per weight or volume), similar to an excise tax, countries therefore already have the mechanisms in place to apply the tax. The country can also choose the point of taxation that is most beneficial to the tax administration, by applying the tax where the taxpayers are less numerous. In Sweden, the tax is applied at the level of distributors and large consumers.

47. Sweden's carbon tax was then outlined. Ms. Åkerfeldt indicated that the Swedish experience demonstrates that carbon taxation can work, that it can be combined with economic growth and that it can be an important instrument to raise revenues, while instigating synergies between different ministries and tightening the relationship between taxpayers and the tax administration.

48. A representative of IMF, Thornton Matheson, then spoke, first noting the array of data and publications that IMF has made available to assist developing countries when implementing their energy policy of choice. She further emphasized that both developed and developing countries may benefit from the application of a robust carbon policy. Whereas developing countries have a more immediate need to raise revenues given that they have a large informal sector and therefore have less of a basis upon which to apply direct taxes, developed countries can also benefit from the application of carbon taxes because their taxes tend to be largely distortive towards certain segments of the economy.

49. The presentation addressed the impact of subsidies on different fossil fuels, identifying which environmental policies would be most suitable for each of the fuel items and highlighting the types of subsidies that tend to be applied under each circumstance.

50. Ms. Matheson outlined the advantages of a carbon tax over other forms of energy pricing, emphasizing that carbon taxes are more economically efficient, have a greater positive impact on the environment and are good revenue raisers. For developing countries, the fact that the tax is easy to administer is a differentiator. The application of other policies such as energy taxes and emissions trading schemes are conversely likely to be more challenging for developing countries, because the administration thereof is more complex. In this context, China, which has been studying the introduction of an emissions trading scheme, was indicated as a relevant case study.

51. Following the presentation, several business representatives expressed their support for a carbon tax over other forms of environmental taxation. Interest was also shown in specific features of the Swedish regime.

52. The Committee thanked the presenters and asked the secretariat to work with them to produce a paper on the subject for the fourteenth session. The paper ideally should cover how developed and developing countries already applying carbon taxes have been dealing with these issues and delve into the main policy considerations when designing and implementing a carbon tax.

G. Base erosion and profit shifting

Limitation of benefits

53. At the thirteenth session of the Committee, Mr. Louie presented a follow-up paper on treaty shopping and limitation of benefits, as requested by the Committee at its twelfth session. The purpose of the paper was to inform the Committee of how the United States of America had addressed that issue through a robust limitation of benefits provision, which may be a useful option for the Model Convention. With a view to combating treaty shopping, the United States endeavours to include in its bilateral treaties clear objective tests to determine whether a particular company is eligible for treaty benefits in cases involving possible treaty shopping. Such tests are used to determine whether the company has sufficient economic ties with its State of residence to warrant the availability of treaty benefits.

54. Mr. Louie explained the various categories of the term "qualified persons" under the provision. In cases when a taxpayer who does not fit into any of those categories applies for the treaty benefits, a final rule lets the competent authority of the State of residence decide whether the taxpayer may access the benefits. That aspect gave rise to considerable discussion. Some participants questioned whether certain legal systems would allow for the exercise of such a discretion by officials. Others considered that the discretionary character of that rule may, in some instances, lead to abuse. Mr. Louie explained that it was very hard to establish a series of rules that would cover all the different types of cases that the tax authorities may come across. The final rule thus afforded some flexibility, and the proposed draft commentary offers some guidance as to how and when it should be applied.

55. Nevertheless, Mr. Louie recognized that a robust limitation of benefits provision in itself was not enough to cover all types of situations. Another participant concurred, pointing out that a limitation of benefits provision was not by itself sufficient to meet the minimum standard on base erosion and profit shifting

and that, in order to do so, it would need to be complemented with another rule addressing conduit financing. If such a rule exists under the domestic law, that would be sufficient; if not, it would have to be drafted into the relevant treaty. Mr. Louie offered to prepare a paper addressing the issue for the next session.

56. In the end it was agreed to have four options in the Model Convention: (a) a principal purpose test rule; (b) a principle purpose test and a limitation of benefits; (c) a limitation of benefits and a narrow rule on conduit issues; (d) a limitation of benefits only (in cases when conduits are sufficiently addressed by the domestic law). Mr. Louie would work with the secretariat on the drafting of the four options in the Model Convention.

57. The Committee thanked Mr. Louie for his work on this issue.

Possible updates to the Model Convention

58. At the twelfth session of the Committee, the Coordinator of the Subcommittee on Base Erosion and Profit Shifting for Developing Countries, Carmel Peters, provided a paper on proposed changes to the Model Convention relating to base erosion and profit shifting. During the discussion on the paper, it was agreed that the updated Model Convention should include an optional article with a general anti-avoidance provision. Such a provision would be the same as the one set out in the outcome of the Group of 20/OECD Action Plan on Base Erosion and Profit Shifting in relation to the OECD Model Convention.

59. A revised commentary on article 5 (3) to address contract splitting was also agreed in principle at the twelfth session. It was noted that a principal purpose test could also play a role in that area, and one member noted that the possibility should be kept open of including text relating to situations in which a country chooses a limitation of benefits and not a principal purpose test rule and what the options would be in that case, depending on the decisions made on the limitation of benefits issue.

60. It was also agreed to align article 5 (7) with the wording of the OECD Model Convention, in particular removing the arm' s length transaction provision, which in fact made it easier to qualify as an independent agent under the United Nations Model Convention than under the OECD Model Convention.

61. At the thirteenth session, the Coordinator presented an updated version of the paper on base erosion and profit shifting, suggesting changes to the United Nations Model Convention and its commentaries, as well as a paper on a proposed new commentary on article 1 and a paper providing a draft commentary for a new article on a general anti-avoidance rule. The discussion on the issues raised is outlined below.

Permanent establishment issues

62. The Coordinator addressed proposed changes to the commentary on article 5. There was consideration of whether to remove the phrase "(for the same or a connected project)" from paragraph 3 (b). The matter was put to a vote, and the majority voted to retain the wording but to include an alternative option in the commentary that omitted the wording, with a balanced commentary on the perceived pros and cons of the two options.

63. The proposed wording in the updated paper on base erosion and profit shifting for a new article 5 (4) (1) on an anti-fragmentation rule and accompanying commentary were discussed at the twelfth session and approved at the thirteenth session.

64. In the light of the concerns of some members that article 5 (6), which addresses insurance enterprises as permanent establishments, could be abused and avoided in relation to reinsurance, at the twelfth session the Committee discussed at considerable length a proposal that the reinsurance exception be removed. The Committee decided at the thirteenth session that the various views on the matter should be addressed in the commentary and that industry input to the discussion should be sought. The decision on how the alternatives would be framed would be left until the fourteenth session.

65. At the twelfth session, the Committee discussed proposals to amend paragraphs 5 and 7 of article 5 to broaden the scope of the rule on dependent agent permanent establishments to counter structures aimed at the avoidance of the creation of a permanent establishment, including the use of commissionaire arrangements. Two options for an amended paragraph 5 were discussed at the twelfth session. The first option was based on the proposal made by the Group of 20 and OECD in the final report on action 7 of the Group of 20/OECD Action Plan on preventing the artificial avoidance of permanent establishment status. The second option was also based on the recommendations made by OECD and the Group of 20, but removed certain wording that might be either confusing or interpreted, rightly or wrongly, as limiting the provision beyond its intended scope. Specifically, the second option proposed removing the wording "that are routinely concluded without material modification by the enterprise" from the recommendation in the final report on action 7.

66. The matter was further discussed at the thirteenth session. Some members noted a preference for the first option on account of its consistency with the outcomes of the Group of 20/OECD Action Plan and the multilateral instrument designed to implement them. Others considered that the additional words could be interpreted by courts as limiting the scope of the provision and potentially reducing source State taxation and therefore preferred the second option.

67. A vote was taken, and the majority supported the first option. The Coordinator would draft some wording to reflect the minority view.

68. The Committee also approved a proposal for the insertion into the commentaries on the Model Convention of an alternate article 5 (6) that allows the source State the right to tax insurance businesses without the existence of a permanent establishment.

69. Another possible change to the Model Convention discussed by the Committee was in relation to the situation when the activities of an agent are devoted wholly or almost wholly on behalf of an enterprise and the agent is therefore not an agent of independent status. It was noted that article 5 (7) of the Model Convention currently provides that, even in that situation, an agent is still independent if it deals with the enterprise on an arm's length basis. It was also noted that such an exception has never appeared in the OECD Model Convention and the concept of an "independent agent" is therefore more limited in the OECD Model Convention than the United

Nations Model Convention. The Committee considered that the exception in the current provision should be removed.

Treaty abuse issues

70. At the thirteenth session, a proposal was agreed to include in the introduction to the Model Convention a reference to tax policy considerations when deciding on treaty negotiations, drawing upon existing United Nations guidance on negotiating tax treaties and the report on action 6 of the Group of 20/OECD Action Plan. The wording will be refined for finalization at the fourteenth session.

71. Changes to the title and preamble of the Model Convention, in the light of outcomes of the Group of 20/OECD Action Plan, were agreed to reflect the purpose of tax treaties in combating tax abuse. The need to update the introduction to the Model Convention to reflect the changes to be made to it in 2017 was also noted.

72. A new article 1 (3) was agreed, providing a saving clause to clarify that treaties do not prevent countries from taxing their own residents. Nevertheless, it was noted that the placing of this provision would need further consideration, perhaps in conjunction with further work on the principle purpose test and limitation of benefits provisions.

73. During a discussion of special tax regimes, it was noted that one option was to define such regimes and have special rules denying benefits in particular cases. Mr. Louie was asked to produce some papers for discussion at the fourteenth session, if time allowed.

74. The Coordinator introduced the paper providing a draft commentary for a new article on a general anti-avoidance rule. The proposed wording at paragraph 19.1 of that paper was approved. It was agreed that paragraph 19.2 would need to be deleted, but that its replacement might be placed elsewhere in the paper.

Capital gains issues

75. The Committee approved changes to article 13 (4) to align it with the provisions recommended in the final report of the Group of 20/OECD Action Plan on action 6. A member of the Committee, Pragya Saksena, pointed out that work in action 6 did not attempt to specify recommendations for addressing base erosion and profit shifting faced with reference to United Nations Model Convention specifications and, accordingly, suggested that it would be appropriate to extend article 13 (4) to cover the properties covered in paragraph 5 in addition to paragraph 1, because paragraph 5 was specific to the Model Convention. It was decided that the issue would be taken up for discussion in the fourteenth session.

H. Taxation of the extractive industries

Extractive industries

76. At the twelfth session, the Coordinator of the Subcommittee on Extractive Industries Taxation Issues for Developing Countries, Eric Mensah, presented a paper summarizing the current status of the work of the Subcommittee. He introduced five new notes prepared by the Subcommittee on decommissioning,

value added tax, negotiation and renegotiation of contracts, permanent establishments and government take.

77. The Coordinator noted that the Subcommittee had decided that it was not feasible to address the issue of the effective review of invoicing, including for the reasons outlined in the note by the Secretariat on "trade mis-invoicing" and its relationship to "transfer mis-pricing" (E/C.18/2016/5), in the course of the current membership of the Committee, but that such a review may be useful for the next update of the extractive industries handbook.

Draft on decommissioning

78. At the twelfth session, the guidance note on the tax treatment of decommissioning for the extractive industries was presented by one of its lead authors, Olav Fjellsaa. He said that the paper dealt with the tax treatment of the decommissioning cost for mining and oil and gas projects and explored the legal issues and types of contract requirements for both the host country and/or resource owner and the contractor and/or investor.

79. The note was well received and recommended for publication as part of the extractive industries handbook, subject to editorial changes.

Value added tax issues

80. At the twelfth session, the guidance note on value added tax in the extractive industries was briefly introduced by the Secretary of the Committee, Michael Lennard, in the absence of its authors. He said that the paper sought to look at value added tax issues related to the extractive industries for the whole life cycle of a project: exploration, development, production, decommissioning and rehabilitation. The note pointed out the pros and cons of various options, seeking a balanced approach to encourage investment while bringing in tax revenues.

81. During the thirteenth session, a tax policy manager at Shell Plc, An Theeuwes, presented an updated draft of the guidance note. She reviewed the main problems faced by the industry and the tax authorities when dealing with value added tax issues in the extractive industries. She said that the note proposed a range of possible solutions or options that tax authorities could use to deal with the issues raised. The paper was approved, subject to editorial changes.

Negotiation and renegotiation of contracts

82. At the twelfth session, the guidance note on the tax aspects of negotiation and renegotiation of contracts was presented by the lead author, Karl Schmalz. He said that the note provided a review of tax and fiscal issues related to contract negotiations and listed various available resources. The need to include tax officials during the negotiation of contracts was also recognized. The paper was approved for publication in the handbook, subject to editorial changes.

Permanent establishment issues in the extractive industries

83. At the twelfth session, the guidance note on permanent establishment issues for the extractive industries was presented by the lead author, Alvaro de Juan Ledesma. The note examined different implications with respect to contractors and

subcontractors within the same projects. Members made comments and sought more details and time for consideration before they could approve it for publication.

84. At the thirteenth session, Mr. de Juan Ledesma presented an updated note on the topic, taking into account the comments received during the twelfth session. Highlighting the complexity of the concept of permanent establishments, the note sought to give an overview of how the concept is applied across countries, with different thresholds for the length of time an establishment must be present before it is regarded as a permanent establishment. With some minor changes, the note was adopted for publication, subject to editorial changes.

Government take

85. At the twelfth session, the lead author, Ms. Theeuwes, introduced the paper on government fiscal take as a basic outline and sought comments thereon.

86. At the thirteenth session, Ms. Theeuwes presented the proposed guidance on fiscal take in the extractive industries, elaborating on the previous draft. The note reviews the different instruments that are used to allocate revenues from the extractive industries and the instruments most frequently used to tax such revenues. With regard to the allocation of income, she indicated that in the extractive industries the allocation is mostly based on production arrangements, including some that are profit-based and others that are based on specific tax regimes.

87. The lead author explained the main contractual and fiscal regimes that are addressed in the paper. The note will help tax authorities to participate in discussions with policymakers deciding on revenue allocation. Such discussions will prevent discrepancies at the implementation stage. The note was approved, subject to editorial changes.

88. The Coordinators of the Subcommittees on Extractive Industries Taxation Issues and on Transfer Pricing — Practical Issues noted that there might be the capacity to work on a guidance note on transfer pricing issues in the extractive industries and provided examples and guidance thereon. If a guidance note could be agreed upon at the fourteenth session, it could be included in the handbook. It was agreed that a small group would be formed by the two Coordinators with a view to drafting such a note for consideration in April 2017.

I. Dispute resolution

89. At the twelfth session, the Coordinator of the Subcommittee on the Mutual Agreement Procedure — Dispute Avoidance and Resolution, Kim Jacinto-Henares, gave a summary of her report on the work of the Subcommittee. She introduced the topic and the work approach that had been followed. She described the lack of sufficient guidance on how to conduct the mutual agreement procedure or other dispute avoidance and resolution procedures. She then invited six members of the Subcommittee to give presentations on different papers on subtopics. The presentations that followed were the outcome of two meetings of the Subcommittee that had been held in the past 12 months, one at the Vienna University of Economics and Business and the other in New York.

90. A representative of Repsol, Susana Bokobo, in her presentation, underlined the need for proper guidance on how to use the mutual agreement procedure and presented a draft proposal for a framework to update the United Nations mutual agreement procedure, taking into account the Group of 20/OECD Action Plan. The principles and the process of the mutual agreement procedure were described in the draft, and the approval of the Committee in taking the work forward was sought.

91. A representative of the World Bank, Norbert Roller, gave a presentation on advance pricing agreements, examining the risks and benefits of such agreements for both tax administrations and taxpayers, the major benefit for both being greater certainty. Using advance pricing agreements for a country may also give that country inside knowledge of the company, with which it is dealing, which it could use in the future. An advance pricing agreement programme in a country can also improve its overall investment environment. Nevertheless, advance pricing agreements can present some risks of asymmetry for a small tax administration with limited capacity when dealing with a multinational enterprise. The benefits have to be weighed against the risks, depending on the country's situation.

92. A representative of TÜV Rheinland AG, Arno Gildemeister, presented a paper on mediation and other forms of non-binding dispute resolution and said that conciliation, good offices and expert evaluation all fell into that category. The advantages of such an approach are that a neutral intermediary may increase objectivity in debate and decrease asymmetry in knowledge and information. Nevertheless, such an approach may delay the achievement of a binding resolution and consequently reduce efficiency.

93. A representative of the Vienna University of Economics and Business, Jeffrey Owens, gave a presentation on arbitration and other binding forms of dispute avoidance and resolution. He presented the work of the Subcommittee as a preliminary review of arbitration across tax treaties, noting the presence of such a clause even in treaties among developing countries.

94. Mr. Louie presented proposed changes to the OECD Model Convention, in the light of the report on action 14 of the Group of 20/OECD Action Plan on making dispute resolution mechanisms more effective. As a way to make such mechanisms more effective, the Subcommittee proposed developing new ways to improve mutual agreement procedures. A modification to the commentary on article 25 of the Model Convention was also proposed.

95. After some discussion, the Committee decided that priority should be given to developing a United Nations handbook on dispute avoidance and resolution, as well as to updating the existing guide to the mutual agreement procedure, as outlined in the coordinator's paper. The guide would remain focused on making any mutual agreement procedures entered into as effective as possible, with an emphasis on good practices. The handbook would cover, more broadly, the issues for consideration by countries that are examining how to address international tax dispute avoidance and resolution issues comprehensively, especially for the first time. It was recognized that the two matters are linked and complementary. The priority issues would not be to the exclusion of other issues being addressed.

96. It was agreed that there would be a separate presentation at the thirteenth session on the changes set out in action 14 and a discussion about whether and to

what extent similar changes might be useful in the next update to the Model Convention, without any presupposition of either following or not following the approach set out in action 14.

97. At the twelfth session, the Academic Chairman at the International Bureau of Fiscal Documentation, Pasquale Pistone, presented a paper prepared in conjunction with Philip Baker on the issue of taxpayers' rights in cross-border tax disputes. He proposed the development of a two-tier system for the conciliation and settlement of cross-border tax disputes with the involvement of taxpayers at all stages of the procedure. Such a system would be supplemented by a system of notification requirements applicable in respect of all forms of international mutual assistance between tax authorities, with specific carve-outs for cases in which this would undermine the effective exercise of tax auditing prerogatives.

98. Mr. Pistone noted that the Group of 20/OECD Action Plan and tax transparency projects strengthened the powers of tax authorities across borders, but kept silent on the protection of taxpayers' rights. He saw the proposal as a concrete way of filling that gap and putting the effective protection of taxpayers' rights on the global agenda as one of the next challenges for international tax coordination.

99. At the thirteenth session, the issue was only briefly discussed, but the need to pursue the work on non-binding dispute mechanisms was specifically noted.

J. Taxation of development projects

100. At the twelfth session, the Coordinator of the Subcommittee on Tax Treatment of Services gave an overview of the history of the issue of taxation of development projects and of the paper on the tax treatment of donor-financed projects, which was presented at the third session of the Committee in 2007, including guidelines for dealing with the matter. She noted that the International Tax Compact, IMF and others had discussed the possibilities of taking this forward at the thirteenth session. It was noted that it might be a good item for the platform for collaboration on tax to consider. In this respect, a meeting with donors would be vital, and the International Tax Compact and others could possibly assist in the organization thereof. The Coordinator and Mr. Sasseville would consult further with other interested parties, with a view to updating the paper and, if possible, organizing the meeting.

K. Tax incentives

101. At the twelfth session, a representative of IMF, Christophe Waerzeggers, gave an outline of IMF work on the issue of tax incentives for developing countries and summarized the report of October 2015 on options for the effective and efficient use of tax incentives for investment by low-income countries. The report was jointly prepared by IMF staff and staff of the OECD Centre for Tax Policy and Administration, the World Bank Group and the United Nations, at the request of the Development Working Group of the Group of 20. It was noted that countries often face pressure to attract investment by offering tax incentives, which then erode the

countries' tax bases with little demonstrable benefit in terms of increased investment.

L. Capacity-building

102. At the twelfth session, Dominika Halka and Harry Tonino of the Secretariat reported on the progress made in developing and implementing the United Nations capacity development programme on international tax cooperation. They provided an overview of the activities carried out in each of the main focus areas, namely: (a) double tax treaties; (b) transfer pricing; and (c) protecting the tax base of developing countries. Moreover, they reported on the work performed in the context of the platform for collaboration on tax, a joint initiative of IMF, OECD, the United Nations and the World Bank Group aimed at strengthening tax capacity-building support to developing countries.

103. The speakers noted that the programme had gradually encompassed the implementation of country-level technical cooperation projects. They also described the progress made in developing the online version of the United Nations Primer on Double Tax Treaties, an introductory-level course aimed at introducing the fundamental principles and typical content of tax treaties, as well as their nature, objectives and effects.

104. Mr. Arnold presented an overview of two practical portfolios on protecting the tax base of developing countries, focusing on the taxation of income from services and base-eroding payments of interest. During the ensuing discussion, a call was made to expand capacity development activities to the area of indirect taxation. A view was expressed that work in this area should first focus on energy taxation, as well as on value added tax in the extractive industries, drawing upon the relevant work of the Committee through its Subcommittee on Extractive Industries Taxation Issues for Developing Countries. A call was made to further strengthen the cooperation with regional organizations, including regional economic communities in Africa, as well as to extend activities beyond Africa and Latin America and the Caribbean. In order to broaden the substantive and geographical scope of activities, it was recognized that additional financial and human resources would be needed.

105. At the thirteenth session, Ms. Halka and Mr. Tonino provided an update to the Committee on relevant activities since the twelfth session, including in the context of the platform for collaboration on tax, and reported on the preparations for the special meeting of the Economic and Social Council on international cooperation in tax matters.

106. Mr. Tonino reported that progress had been made on the update of the United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries and the development of practical portfolios on protecting the tax base of developing countries, intended to complement the Handbook. In addition, he noted that two capacity-building events had been organized: (a) a course on transfer pricing held in Antananarivo from 14 to 17 November 2016; and (b) a country mission held in Quito from 28 November to 1 December 2016, which concluded the technical cooperation project on transfer pricing delivered for the benefit of the Internal Revenue Service of Ecuador.

107. Mr. Tonino reported that work on the conversion of the United Nations Primer on Double Tax Treaties into an online training course had been completed and that the course was being tested in a pilot phase before being made available to tax officials in developing countries, in early 2017.

108. In the discussions that followed, support was expressed for the work performed, and a call was made to develop, in addition to the course on double tax treaties, an online training course on transfer pricing and to make them available not only in English, but also in French and Spanish.

M. International trade in goods — tax issues

109. At the twelfth session, Enrico Martino introduced this agenda item, including the Secretariat paper giving an outline of the World Customs Organization *Guide to Customs Valuation and Transfer Pricing* (2015). A representative of the World Customs Organization, Ian Cremer, explained the work carried out by the organization in cooperation with OECD, the World Bank and the International Chamber of Commerce and noted that addressing the interaction between customs and transfer pricing regimes had been an important issue in recent years.

110. It was noted that the Guide addresses how customs administrations can take into account available transfer pricing information prepared for direct tax purposes when examining related party transactions and also give consideration to the impact of transfer pricing adjustments on the customs value of imported goods.

111. Mr. Cremer noted that the focus was now on providing further guidance to customs administrations on how to examine and interpret transfer pricing documentation that may be helpful in this regard. With respect to the impact of adjustments made after importation for transfer pricing purposes, the key question was in which cases, if any, such adjustments should be taken into account by customs administrations in determining the customs value of imported goods.

112. It was pointed out that the Guide recognizes the importance of encouraging customs and tax administrations to establish bilateral lines of communication in order to exchange knowledge, skills and data, where possible, to help ensure that each authority has the broadest picture of a multinational enterprise group's business, as well as its compliance record, and can make informed decisions on the correct revenue liability.

113. Members and observers noted the importance of this work and the coordinator of the Subcommittee on Article 9 (Associated enterprises): Transfer Pricing noted that references to this work and these issues would be made in the 2017 version of the United Nations Practical Manual on Transfer Pricing for Developing Countries.

114. Mr. Martino, Mr. Cremer and others involved in this work, which was now concluded, were thanked for their contributions.

N. Article 23 A (Exemption method): minority view on inclusion of paragraph 4

115. In 2014, at its tenth session, the Committee agreed to include in the next version of the Model Convention a new paragraph 4 to article 23 A corresponding to that in the OECD Model Convention. Wording reflecting the minority view opposing such a paragraph was, as agreed at the tenth session, to be included in the commentary on article 23 A in the next version of the Model Convention. The text reflecting the minority view could not be agreed upon at the eleventh session. At the twelfth session, some members indicated that they no longer considered that they needed to reflect a minority view. The matter was not discussed at the thirteenth session. In the event that some members still seek the reflection of a minority view, that would need to be settled at the fourteenth session.

O. Other matters

116. At its twelfth and thirteenth sessions, the Committee noted the central importance of ensuring that key products of the Committee's work, such as the Model Convention and the Manual on Transfer Pricing, were translated into all official United Nations languages in order to maximize effectiveness, and called for efforts, including by potential funders, to ensure that this would be done as quickly as possible, taking into account the requirements in terms of quality.

Chapter V

Dates and provisional agenda for the fourteenth session of the Committee and dates for the fifteenth session of the Committee

117. The provisional agenda for the fourteenth session, to be held from 3 to 6 April 2017 in New York, as decided by the Economic and Social Council, will be as follows:

1. Opening of the session by the Chair of the Committee.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:
   (a) Issues related to the updating of the United Nations Model Tax Convention:
      (i) Article 8 (Shipping, inland waterways transport and air transport): changes to the Model Tax Convention on Income and Capital related to international traffic and possible similar changes to the United Nations Model Tax Convention;
      (ii) Base erosion and profit shifting:
         a. Possible changes to articles and commentaries (including the ordering and numbering of provisions);
         b. Possible treaty revisions to deal with subsequent changes in law;
      (iii) Article 12 (Royalties): possible amendments to the commentary on article 12 in relation to:
         a. Industrial, commercial or scientific equipment;
         b. Software-related payments;
   (b) Other issues:
      (i) Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries: briefing by the coordinator on the editorial process;
      (ii) Extractive industries handbook:
         a. Draft guidance note on selected transfer pricing issues in the extractive industries in cooperation with the Subcommittee on Article 9 (Associate enterprises): Transfer Pricing;
         b. Update on the editorial process;
      (iii) Taxation of development projects;

(iv) Mutual agreement procedure — dispute avoidance and resolution, including possible updates to the United Nations Model Tax Convention;

(v) Capacity-building;

(vi) Environmental tax issues of relevance to developing countries;

(vii) Other matters for consideration, including suggestions for Committee procedures and future Committee work.

4. Provisional agenda for the fifteenth session of the Committee.

5. Adoption of the report of the Committee on its fourteenth session.

118. The Committee decided to hold its 2017 session in Geneva, from 17 to 20 October 2017.

Chapter VI

Adoption of the report of the Committee on its twelfth and thirteenth sessions

119. The Committee approved and adopted the present report for submission to the Economic and Social Council, with the text to be settled after the sessions.

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